Letters on the Essex Nullity (1613)

George Abbot and James VI/I

Transcript

British Library, Stowe MS 422, ff. 45r–52v

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The opinion of the Lorde Arch Bishopp of Canterburie Concerninge
the Nullity of Marri[a]age betweene the Earle of Essex and the
Ladie Frauncis Howard his wife deliuered to the Kings Maiestie/

In as much as you doe firmely beleeue that the scripture directlye or by Consequence doth Conteyne in it sufficient matter to decide all Controversies especiallye in things apperteyninge to the Church, And that marriage amongst Christians Can bee noe ~~lett~~ lesse accompted then a sacred thinge, and beinge instituted by god in Paradice, honored by the presence of our saviour himself, and declared by St Paul to be a figure of the spirituall Coniunction ~~of~~ betweene Christ and his Church; I would bee gladd to knowe, by what text of scripture either of the old or newe testament, a man maye have a warrant to make a nullitie of marriage solemlie Celebrated. *In facie Eccl[es]iæ propter Maleficum versus hanc*

which

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which I doe the rather aske, because I find warrant expresslie in Scripture to make a Nullitie of Marriage propter frigiditatem by the words of our Saviour Matth. 19. [*Left margin:* Matth. 19. 12.] 12. For there are some Chast or Eunuches wh[i]ch were soe borne of theire mothers belly and there bee some Chast which bee made Chast by men, and there bee some Chast which haue made themselues Chast For the Kingdome of heaven; I would also knowe gladlye what Auntient father, either amongst the Greekes or Lattines, by occasion of interpretac[i]on of scripture, or anie disputac[i]on hath menc[i]oned *maleficum versus hanc* or declared it to bee a Cause of Nullitye in Marriage. The like I demaund touching the Auntient Councells, either generall or provinciall, and Concerninge the stories Ecclesiasticall, whether anie such matters bee to bee found in them If for ought that appeareth, neuer menc[i]on was made of this, till the tyme of Hinemerus Episco:=pus Remensis, (whoe lived Nyne hundred yeares after Christ) It maye well be Conceaved that this was a Concomitant

of

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of darkenes, and popish superstition, w[hi]ch about that tyme grewe to soe greate height (God permittinge then that punishment to fall vpon the Children of unbeleife) But since the light of the Gospell is nowe in soe great measure broken out agayne whye should I [not] hope those that have embraced the Gospell, should bee free from this [Malef[i]cium], especiallye since amongst a Million of men in our Age there is not one found in all our Countrie whoe is Cleirlye and evidentlie knowne to bee troubled with the same. And if there should bee anie, which might seeme to bee thus molested, wee are taught to use remedies against it, The one spirittuall Phisicke, the other externall. For the first our Saviour saieth *Hoc genus Dæmonio[rum]*

non eijcitur nisi per orationem et Jeiunium; And St Peter speakinge of the devill saieth *Cui resistite, firme in fide.* And the Canonists themselves prescribe Almes fastinge and prayer to bee vsed in that Case, butt that theye ioyne superstitiouslie theire Exorcismes therevnto. And for Corporall Phisicke to bee imployed as against a

disease

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disease soe is the Iudgment of our late divines whether the speake *veneff[i]cium* or nott Nowe admitt the Earle of Essex might bee ymagined to bee troubled w[i]th *Maleficium versus hanc* I demaund what Almes hath been given what fastinge hath been vsed what prayers hath been powred out to appease the Indignation of God towards him or his wife Or what Phisicke hath been taken or medicine applyed for theise three yeares together Noe one of theise things butt the first hearinge must bee to pronounce a Nullity in the Marriage Of which declarac[i]on wee knowe the begininge butt noe Mortall mans witt Can foresee the and either in his person or example

Iudicium Melancthonis de Diuortiis ex Impotentia in loco de Coniugio quod Christopherus Perilus suis in Melancthonis examen explicationibus ~~exeruit~~ in seruit secunda parte Iudicium Hemingii Libello de Coniugio repudio et divortio Iudicium Pollani professoris Theologiæ in Acadæmia Basill Lib. 10 sitage Cap. 18

Jiudicium Iraelarii profesessoris Theologiæ in Acadæmia Marlb. in arca fæderis

Judicium

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Iudicium Beza Lib. 4. de Diuortiis pag. 9. Gen. Impress 1591 pag. 94:

Iudicium anchii Lib. 4. de operibus Cap. 3 non tamen impotentia et veneficio attigit./

The Kings Ma[jes]ties answere to the Lord Archbishopp of Canterburie his opinion/

To the first Argum[en]t that the scripture doth directlie or by Conseqeunce Conteyne sufficient matter to decide all Controuersies especiallye in this apperteyninge to the Church this is in myne opinion *Propositio erronea* and one of the Puritants ground w[i]thout a better distingtion or explanac[i]on For the Orthodaxe proposition is that the Scripture doth directlye or by Consequence Conteyne in it sufficient matter to decide all Controuersies in points of of faith and salvac[i]on Of which sorte a Nullitye in Marraige Cannott bee accompted for one And therefore your Consequence vpon the former proposition must faile For

further

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further satisfacc[i]on to your followinge question I saie your owne second question doth answere it for pronouncinge a Nullity *propter frigiditatem* then all the meanes w[hi]ch maye make him *frigidus versus hanc* must bee Comprehended therein For whye doth our Church Condemne as incestuous the Marriage of a man w[i]th his sisters daughter or the marriage of two sisters but *A paritate rationis* for none of them is *in terminis* prohibited by the scripture onlye the Conclusion is gathered *a paritate rationi* for if it bee nott lawfull to marrye your fathers wife because thereby you discouer your fathers shame nor his sister because shee is is his kinswoman nor your owne sister for thereby you discouer your father and mothers shame

It Can noe more bee lawfull for you to marrye your sisters daughter for thereby also you discouer your owne shame as alsoe the same reason serues for ascendinge or descending in points of Consanguinitye *quia parest ratio* The like is in this Case for although Christ speakes onlye of three sortes of Euenuches yet *Ratio est quia non potest esse Copula inter*

Euenuchum

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Euenuchum et Mulierem and therefore St Paul in the seventh Chapter of his first epistle to the Corinthians telleth vs Cleerely that it is nott *Coniugium sine Copula.* I Conclude therefore *A paritate rationis* that Christ did Comprehend vnder those three sorts of Euenuches all inhabilitie which doth Continuallye hinder *Copulam versus hanc* whether it were naturall or accidentall For what difference is there betweene Cuttinge of the hand and beinge made impotent thereof *Amputatio et Multilatio membri* is all one in the Civill lawe And it is a like defraudinge of the woman when either hee ~~or~~ whoe is to be her husband is gelded ~~owh~~ or when the use of his member towards her is by anie vnlawfull meanes taken from him Neither is it anie waye needfull to Crave the particular warrant of Nullitye *propter Maleficium* out of the scripture noe more then there is warrant in that place for anie Nullitye at all for Christ doth nott directlye saie that a Mariage soe made shallbe nullified neither doth hee teach vs what forme of processe shall be vsed in it nether makes hee menc[i]on of a Trianuall

probac[i]on

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probac[i]on noe more then hee forbiddeth marriage w[i]thin the fourth degree with leave obteyned o the Bishopp of the diocesse. It is then sufficient for all moderate Christians to bee taught out of the word that marriage is *Nulla sine Copula* and that the wordes *quod deus Coniunxit* is neuer found in the scripture where *exeunt eis Caro vna* doth not proceede vizt theye shall be one fleshe Butt whether the impediment bee vniversall or *versus hanc* only and whether the fault thereof hath bin borne w[i]th him or done vnto him by violence or fallen by disease or by disproportion or inaptitude betwixte the parties or by vnlawfull or vnnaturall practises it is neuer *Pax Ratio* hee is *Eurnuchus versus hanc* Neither doth it matter whether hee bee *Euenuchus versus omnes alias* seeinge to her only was hee married then *Paritate rationis* such Nullities are grounded vpon the foresaid warrant of scripture Neither hadd our saviour Christ anie occasion to speake then to the Iewes Concerninge Maleficium For although it bee apparent that God made Kinge Abimelech and his family vnable to abuse Sara Abrahams wife and soe hee was

made

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made by God himselfe *Eunuchus versus hanc* and that it bee nott vnprofitable that the devill beinge Gods Ape should imitate gods worke by his filthye witchcrafte by makeinge such a god will permitt him vnable *versus hanc* howbeit it bee profitable that it was longe after that tyme before the devill putt that tricke in vpon the earth As for the third and fourth questions what menc[i]on the fathers and Councell make of *Maleficium versus hanc* I answere that it maye bee that if theye bee well searched that either somethinge to this purpose in them or at least *aliquid Anologon* which *a partitate Rationis* or by Consequence maye serue to decide this question Butt leaveinge this to search my mayne Answere is that wee must distinguish

of tymes For in all the first Ages as longe as persecuc[i]on laye heavie vpon the Church and before that the Empire became Christian the Church did nott meddle w[i]th questions of Marriage For the Civill Iudges determined them whoe would nott suffer the Church to meddle w[i]th anie thinge w[hi]ch drewe a Consequence after it of possessions and Inheritance as Marriage doth Naye even diuerse hundred yeares after the Conversion of

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the Emperors the Iudgment and decision of all such questions did still remaine *in foro civile* till the Popedome began to waxe greate and assume or rather vsurpe to her selfe an Independant & ~~or~~ supreame Iudicatorye in all Ecclesiasticall Causes And therefore the fathers and Councelles hadd noe occasion to make menc[i]on of that which was not *forum fori* at that tyme And besides that it is an evill Argum[en]t to saie such a thinge is vnlawfull because the fathers and Councells make noe menc[i]on of it For you knowe much better the I that diuerse and manye pointes betwixt the papists and vs are neuer menc[i]oned by the fathers because theye Could neuer have dreamed that such questions would arrise and therefore are the fathers only exact in such questions as are most agitated and vsed vpon the stage in theire tyme as *De Trinitate de duabus Christi naturis* and such like it is therefore sufficient that there Can be nothinge found in them w[hi]ch maye iustlye ^{be} vnderstood to Contradicte this opinion and it is very probable as is I said before that this tricke of Maleficium hadd not then bin putt in practise in the world and therefore

nott

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nott knowne nor menc[i]oned by them For whye maye nott the Devill aswell finde out newe tricks of witchcrafte when God will permitt him as hee doth dailye devise newe sortes of Heresies For his malice can neuer end till the end of tymes To the Fifte Argument my former Answere doth alsoe serue for till the 900 yeares of Christ it maye be that that devilish tricke Came neuer to be discouered And you knowe the old Proverbe *Ex malis moribus bonae leges* and it is nott vnlikelye that that tyme of darkenes gave the devill occasion of devisinge such newe tricks Looke my Demonologie and yett was that lawe for wh[i]ch you scite made by Charles the great whoe in soe many greate pointes as you well knowe hadd soe greate light as I dare scarsely terme his tyme a tyme of darknes was in pointes of superstition I will still maynteine (as I have euer done) ~~f~~ that ^{for}~~the~~ matter of order and pollicye all the world shall neuer bee able to find out anie other soe good and ^{so} old order of government to be putt in the place of it in signe whereof there is noe well governed Com[m]on wealth in all the Christian world where the

Comon

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Com[m]on lawe is nott receaved to Iudge in questions of that nature and it is Certaine that this question nowe in hand is ^{only} a question of order and policie for the ground of this question that the Essentiall pointe of Matrimonye Cannot bee ~~granted~~ accompted *sine Copula* is warranted by expresse scripture and Confessed by your self To the sixte Argument or rather hope I feare that hope shall proue Contrarie to faith for sure as God is there bee devills and

Devills / must haue some power and theire power is nott in this world For Sathan is the Prince of Darkenes neither are the elect exempted from his power Job was nott St Paul Christ saieth to his disciples {Cribravit} vos Sattanus and if the devill haue anie power ouer the Elect it ouer their flesh and if ouer the flesh rather ouer the fleshliest and most sinfull part thereof wherevnto originall sinne is soe tyed as God before and vnder the lawe to shewe the difficultye of purgeinge mans originall sinne ordeined the Amputac[i]on of the foreskinne of that member and to exempt those of our profession from the power witchcrafte

is a

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is a Paradoxe neuer yett mainteyned by anye learned or wise man That the Devills power is nott soe vniversall amongst vs that I freely Confesse butt nott that it is vtterly restrained Quoad nos Howe was then a Minister of Geneua bewitched to death and howe are the witches dailye punished by our lawes? Surelye if they Can Charmene none butt Papists wee are too Charitable to labour soe for avenginge of them onlye Satan is permitted to punish man for his breach of the second as the first Table and therefore are wee noe lesse guiltye then the Papistes are And if the power of witchcrafte maye reach to our life much more to a member speciallye to a member so governed by the fancie wherein the devill hath his principall operac[i]on and hee maye soe estrange the husbandes affecc[i]ons from the wife that hee Cannott bee able to performe that dutie vnto her For it is a Comon thinge in many mens natures that theye Cannott doe that Act butt where they love nor fight butt when theye are angrye God keepe us therefore from puttinge the tryall of our profession vpon Miracles Lett the Miracle mongers live by theire owne trade To your seventh Argument touchinge the remedies what doe you knowe whether both parties or either

of them

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of them have vsed both those remedies or nott And that that speciall remedye should be uvsed publiquely for them I Cannott see noe necessitie for *non inter[e]st Reipublica ne Eccl[es]ia* and private persons are Comaunded to vse theire fastinge and Almes secretlye and in private besides that noe such Care is likelye to succeede well vnlesse the parties owne heart and Affections bee sett vpon it And as for your Conclusion vpon the Incom[m]odum either vpon his person or the example I can see none in either For ~~his person on the Example~~ as to this Couple betweene whome Marriage was neuer truly accomplished theye will peradventure both of them by the declaratiry of this Nullitie be made Capable to accomplish marriage w[i]th others w[hi]ch theye Could nott doe betwixt themselues wherein they maye live to the satisfacc[i]on of their heartes and enioye the blessinge of procreac[i]on of Children And as to the example the lawe shall be fulfilled w[i]th Admin[i]strac[i]on of Iustice w[hi]ch Cannott serue for an example or president of Counterfeited Nullities hereafter *Notorietas facti* or rather *non facti* is *lucedarior* in this Case besides the Mayne legall probac[i]ons and Confessions of the parties which haue been taken in this processe

whereas

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whereas by the ~~processe~~ Contrarye if theye shallbe forciblely kepte together theire name and shaddowes maye be kepte together butt neuer their persons or affecc[i]ons and theye shall

be forced to liue together either in perpetuall misery or scandall or both and what such a forced Continencie Can availe the Monkes the Monkes Continencie Can teach vs And for a president in tyme to Come it Can reach noe further then to open a waye of lawfull releife for anie parties that shall Chaunce to bee distressed in that sorte And as for your extract of our late divines opinions vpon this question I Confesse I Cannott gesse what your intent was in sendeinge them vnto mee for theye all agree in termes with myne opinion but there is such a thinge as Maleficium and *Maleficiale versus hanc* and your very interlyned passages proue it Cleerest and for theire Advise Concerninge the Remedies that is butt *Consilium non ius nec decretum* not impoisinge a necessitye butt is to bee vsed by discrec[i]on as occasion shall serve or require As for the Legall Doubtes of formallitye theye Concerne none of your Callinge if your Conscience be resolued in pointe of Divinity it is your parte to give yo[u]r

Consent

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Consent to the Nullitye and lett the Lawyers take the burthen of makeinge it formall And as for the Trienniall probac[i]on I hope noe man Can bee soe blinde as to make a doubt whether it be taken before or after the suite began & in Conclusion our divines soluc[i]on of this question proue Clearely that this resoluc[i]on vpon this Doubt how ever it was in blindnes as you thinke yet it is nowe approved in tyme of greatest light and paritye of the profession of the Gospell To Conclude then if this maye satisfie your doubtes I will end with our Saviours wordes to Sainte Peter *Et Cum Conversus fueris Confirma fratres tuos* For on my Conscience all the doubtes I haue yett seene made in this busines are nothinge but *nodus in Scripo querere*/

Other manuscript witnesses

- All Souls College, MS 117, f. 149r
- British Library, Additional MS 11600, ff. 11v–15r
- British Library, Additional MS 29587, ff. 6r–9v
- British Library, Harley MS 813, ff. 132r–135v
- British Library, Sloane MS 1819, ???
- British Library, Sloane MS 1856, ff. 47x–50x
- British Library, Sloane MS 363, ???
- British Library, Stowe MS 401, ff. 4r–9v
- British Library, Stowe MS 402, ff. 2r–4v
- Bodleian Library, MS Rawlinson C 63, ff. 4v–15v
- Bodleian Library, MS Rawlinson C 64, ff. 3v–11v
- Bodleian Library, MS Rawlinson D 1345, ff. 147r–151r
- Bodleian Library, MS Tanner 304, ff. 60r–64r
- Bodleian Library, MS Tanner 74, ff. 22r–27v
- Bodleian Library, MS Willis 58, ff. 199r–204r
- Bodleian Library, MS Wood F.34, ff. 9r–10r
- Cambridge University Library, MS Gg.4.13, pp253–257
- Folger Shakespeare Library, MS V.b.303, pp173–181
- Gonville & Caius College, MS 73/40, ff. 219v–222v
- Harvard Law School, MS 1227
- Harvard Law School, MS 67, ff. 3r–22x
- Huntington Library, Hastings Legal Papers Box 1, Item 16
- Jesus College, MS 83 [on deposit in Bodleian], ff. 54r–56r

- Lambeth Palace Library, MS 663, ff. 182r–183v
- Nottingham University Library, Cl LP 19, ff4

Modern print exemplars

- *State Trials*

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https://mpese.ac.uk/t/AbbotJamesNullity1613.html